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The Judicial System of Postrevolutionary Cuba

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Abstract

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KEYWORDS: Cuba, system, judicial

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I. Introduction

Cuban justice is a subject which has captured the attention of numerous American writers. Unfortunately, "few of them attempt to analyze Cuban legal institutions in detail and do not discuss what Cuban legal writers have said about . . . [the system] or how the new legal texts compare with the actual practice of courts and administrators."¹ This article examines some of the major changes which have occurred in the structure of the Cuban judicial system since the rise of Castro and how these changes have affected the courts and those who participate in the judicial system.

Cuban justice is not an isolated concept which can be understood solely in reference to institutions and codes. The Cuban revolutionary

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1. Berman and Whiting, *Impressions of Cuban Law*, 28 AM. J. COMP. L. 475, 476 (1980). See generally L. SALAS, SOCIAL CONTROL AND DEVIANCE IN CUBA (1979); Azicri, *An Introduction to Cuban Socialist Law*, 6 REV. SOC. L. 153 (1980); J. BRADY, *The Revolution Comes of Age: Justice and Social Change in Revolutionary Cuba*, CRIME, JUSTICE AND UNDERDEVELOPMENT (C. Sumner ed. 1981); Azicri, *Change and Institutionalization in the Revolutionary Process, The Cuban Legal System in the 1970's*, 6 REV. SOC. L. 164 (1980).

The only two empirical works which were based on field observations are: Kennedy, *Cuba's Ley Contra la Vagrancia: The "Law on Loafing,"* 20 U.C.L.A. L. REV. 1177 (1973); and Berman, *The Cuban Popular Tribunals*, 69 COLUM. L. REV. 1317 (1969). The most promising work may be that of Douglas Butterworth who cooperated with Oscar Lewis and others in a thorough study of Cuban slums during 1969-70. Some of the material involves interviews and observations of popular courts. See D. BUTTERWORTH, *THE PEOPLE OF BUENA VENTURA* (1980).

For studies of specific institutions or laws see Brady, *Fresh Winds on Rotten Sails: Spanish Legal Reforms, American Parallels and the Cuban Socialist Alternative — A Reply to Antonio Beristain*, 9 INT'L. J. SOC. L. 177 (1981); M. Azicri, *Crime and Law Under Socialism: the 1979 Cuban Penal Code*, (Nov. 2, 1979) (unpublished paper presented at the National Conference on Cuba, Center for Cuban Studies, N.Y.); M. Tigar, *The Educative Function of Criminal Law: Cuban Reforms in Comparative Perspective*, (Nov. 3, 1979) (unpublished paper, National Conference on Cuba, Center for Cuban Studies, N.Y.); Comment, *The Socialist Constitution of Cuba (1976)*, 17 COL. J. TRANSNAT'L. L. 451 (1978).

process has been characterized by flux and internal struggle during its brief history.² A useful tool in understanding these developments is to place them within the context of the political and ideological events which have shaped them. Scholars, in their discussion of Cuban development, have adopted a number of different historical models, grouping events within different periods.³ This article follows a model which divides Cuban legal progress into two major periods: the revolutionary phase, from 1959 to 1969; and the institutionalization phase, from 1970 to the present.

Changes in Cuban laws may be analyzed within two conceptual levels: those affecting the judicial infrastructure and those transforming the statutory scheme. This article concentrates on modifications to the judicial apparatus, especially those changes which sought to transform Cuban political culture by utilizing the judicial system as a tool for change.

II. The Revolutionary Phase From 1959 to 1969: Major Judicial Innovations

The first phase of Cuban revolutionary development took place from 1959 to 1963 and was characterized by eradication of the old and consolidation of power in the hands of the new regime. As portrayed by Castro, this was a phase marked by "iconoclasm in relation to laws; we have to destroy the system, destroy its laws, destroy everything."⁴ Struggle was the main theme during this period. Conflict permeated not only foreign relationships but was an integral part of domestic policy as well.

A. Conflicts with the Existing Judicial System

Clashes with the traditional, multi-level judiciary began early. These centered on disputes over the exercise of power and intrusion by the executive into what were previously exclusive judicial arenas. The case that brought this conflict into the forefront was the trial, which

2. See J. DOMINGUEZ, *CUBA: ORDER AND REVOLUTION* (1978) and C. MESA-LAGO, *CUBA IN THE 1970'S: PRAGMATISM AND INSTITUTIONALIZATION* (1978).

3. See generally C. MESA-LAGO, *supra* note 2. For a discussion of legal periods see Azicri, *An Introduction to Cuban Socialist Law*, 6 REV. SOC. L. 153 (1980).

4. Speech by Fidel Castro on the tenth anniversary of the founding of the Ministry of the Interior, VERDE OLIVO, June 13, 1971, at 4, 63.

began in February 1959, of forty-five members of Batista's air force who had been charged with genocide. The trial resulted in the acquittal of all defendants. Fidel Castro denounced the verdict publicly and called for another trial. A special review panel was convened which allowed the prosecution to lodge an appeal. The lower court's decision was subsequently reversed and a second trial resulted in the defendants' conviction. Despite protests from the judiciary and the organized bar, the conviction stood.⁵

After this incident the government established, and exclusively relied on, "revolutionary" courts for the trial of political cases. Its judges were selected on the basis of political commitment rather than skill and were often members of the armed forces subject to military discipline. As a result of procedural amendments these courts were not bound to the fundamental guarantees of the rights of the accused, ensuring the speed, severity and certainty of conviction.⁶ The creation of these courts reflected a policy of parallelism and avoidance later followed in the creation of other institutions. The traditional court system was to handle civil and criminal cases while the new system was to process those cases in which the accused was charged with a direct challenge to the integrity of the regime.

Disputes also extended to the enforcement of a number of new laws affecting proprietary rights. In 1960 the Supreme Court rejected a number of appeals from The Instituto Nacional de Reforma Agraria (INRA)⁷ and increased the reparations to be paid to expropriated landowners in several cases.⁸ At the same time the Supreme Court upheld the constitutionality of a majority of revolutionary decrees.⁹ The most serious disagreements arose over jurisdictional issues. The Supreme Court found unconstitutional, for example, a presidential resolution declaring the nullity of a lower court order.¹⁰ It also set aside a law

5. F. MORENO, *The Cuban Revolution v. Batista's Pilots*, in *POLITICAL TRIALS* 94 (T. Becker ed. 1971).

6. For a full treatment of the first revolutionary courts and clashes between the judiciary and the regime see INT'L COMM'N OF JURISTS, *CUBA AND THE RULE OF LAW* (1962).

7. The Instituto Nacional de Reforma Agraria (INRA) was the agency responsible for implementing land reform.

8. J. DOMINGUEZ, *supra* note 2, at 250.

9. During 1960 the Supreme Court only made one ruling of unconstitutionality not related to court organization. *Id.*

10. *La jurisprudencia al día*, sentence no. 5, February 5, 1960 (January 20, 1960).

prohibiting appeals from decisions of the Ministry of Labor and overturned rulings by revolutionary courts which invaded the ordinary jurisdiction of the courts.¹¹

The primary tool for overcoming judicial resistance was the legislature. From January 1959 to August 1961, the cabinet amended the Fundamental Law, equivalent to the constitution, twenty-two times, or once every forty-five days.¹² In reviewing these amendments, the International Commission of Jurists concluded that "all of the reforms to the Fundamental Law converge in only one point: the concentration of power in the hands of the governing group."¹³

Judicial response to these actions was mixed. Several members of the judiciary in 1960 began a movement for judicial reform to establish independence from the other branches of the government. Others voluntarily resigned or were unable to resist the pressures imposed.¹⁴ Between November 1960 and February 1961, twenty-one of the thirty-two justices of the Supreme Court resigned or were dismissed.¹⁵ A similar pattern followed throughout the lower court system.¹⁶ By 1961, the executive could boast that "all of the counterrevolutionary judges had been removed but the judicial system continued to function in the same manner. Its structure had not been changed."¹⁷

By 1962 Cuba was rapidly moving towards a socialist model of government. During these early years a debate ensued over possible development strategies. At the core of these discussions were the means

11. J. DOMINGUEZ, *supra* note 2, at 249-53.

12. INT'L COMM'N OF JURISTS, *supra* note 6, at 64-65.

13. *Id.* at 121-22. Some of the major modifications include authorization of the death penalty in political cases; retroactive application of new legislation; elimination of the right of habeas corpus; no appeal rights to the ordinary court system from decisions of revolutionary tribunals. The justification for many of these actions was set out by Castro:

We shall be respectful of the law but of the revolutionary law; respectful of rights but of revolutionary rights — not of the old rights, but the new rights we are going to make. For the old law, no respect; for the new law, respect. Who has the right to modify the constitution? The majority. Who has the majority? The Revolution.

Revolucion, March 23, 1959.

14. J. DOMINGUEZ, *supra* note 2, at 250.

15. *Id.* See generally INT'L COMM'N OF JURISTS, *supra* note 6.

16. J. DOMINGUEZ, *supra* note 2, at 249-53.

17. Harnecker, *Una justicia revolucionaria*, BOHEMIA, Aug. 17, 1973, at 48. See also Roca, *¿ A quienes debe servir la justicia revolucionaria?*, MEMORIA DEL SEMANARIO JURIDICO SILVIO MAYORGA 159 (1981).

by which socialism could be reached. Ernesto ("Che") Guevara, one of the primary leaders of the revolution, was the exponent of a "moral" economy with workers being motivated by moral rather than material incentives.¹⁸ Confronting the Guevara position were old-time Communists who advocated centralized planning based on traditional methods of economic control, the formation of an efficient and organized bureaucratic cadre, and the development of the Communist Party.¹⁹ The conflict generated by these early years had dire consequences for the regime. A substantial number of trained legal personnel fled from the island leaving the courts understaffed and without direction.²⁰ The remaining cadre were not fully trusted by the government, with suspicions being directed at both individuals and institutions.

The regime was seeking a radical transformation of Cuban political culture within a short period of time and experimentation was necessary. In order to overcome these problems the government bypassed, but did not eliminate, existing judicial institutions. A second, collateral system was established which derived its support from populist organizations.²¹ Creating these alternative forums achieved three important short-term goals: it bought time for Castro's government to develop revolutionary institutions to replace the existing apparatus; it provided a check against concentration of power within any specific faction of the government; and finally, it allowed the experimentation thought to be necessary for the achievement of long-term goals of integration and socialization of the citizenry. Although many organizations might be discussed none is more exemplary of this than the popular courts.²²

18. See E. GUEVARA, *CUBA: UNA REVOLUCION EN MARCHA*, (1967); Roca, *Cuban Economic Policies in the 1970's: The Trodden Path*, 12 *STUD. IN COMP. INT'L DEV.* 86 (1977).

19. For a full discussion of this debate see: R. BERNARDO, *THE THEORY OF MORAL INCENTIVES IN CUBA* (1971).

20. Cruz, *It Took Only Three Years: The Destruction of a Law Firm*, 50 *A.B.A. J.* 63 (1964). See also J. DOMINGUEZ, *supra* note 2, at 249-53.

21. Mass organizations, characterized by universal memberships, were established during the beginning of the Revolution. The best known are: the Committees for the Defense of the Revolution (CDR) (see *infra* note 26), militias, worker groups, and the Federation of Cuban Women. For a review of the CDR see R. FAGEN, *THE TRANSFORMATION OF POLITICAL CULTURE IN CUBA* 69-103 (1969).

22. Another court structure created during this experimental period, largely as a result of policies advocated by "Che" Guevara, was the Labor Courts. In order to carry out the production requirements of the new economic system while remaining faithful to the ideal of moral rather than material incentives, legislation was necessary to reward and sanction labor. Eventually labor councils were established to deal with these

B. The Development of the Popular Courts

One of the major judicial innovations introduced by the regime was the establishment of popular tribunals in 1961. These were patterned after comrades' courts in the Soviet Union and charged with educating the rural poor in correct behavioral patterns.²³ As expressed by Fidel Castro, the goal of these tribunals was "to recognize and resolve these problems, not with sanctions, as in the traditional style, but rather with measures that would have a profound educational spirit."²⁴

Although their beginnings were modest, they rapidly expanded and by 1968 there were 2,221 such courts, staffed by 8,000 judges, in operation throughout the island.²⁵ The geographical areas served by these courts closely paralleled those of The Committees for the Defense of the Revolution (CDR),²⁶ with each neighborhood having a court exercising jurisdiction and staffed by an average of forty judges sitting in panels of three.²⁷

From their inception, popular courts were staffed by part-time judges, selected from the neighborhood or factory where the tribunal presided. The presence of lawyers was discouraged and formal legal

issues. The councils were composed of panels of five members elected by co-workers and sought to modify worker behavior, using peer pressure both as a form of general and specific deterrence. Though penal sanctions were to be avoided these tribunals came to rely on fines as their primary sanctioning tool; leading the Minister of the Interior in 1969 to complain that: "these measures do not contribute in any way to the formation of the New Man . . . , or towards the development of the concept that fulfillment of social duties is an obligation for all citizens, which is not fulfilled by money." Risquet, *La disciplina laboral es la condición indispensable para la victoria*, BOHEMIA, Aug. 15, 1969 at 70, 72. See also Perez-Estable, *Institutionalization and Worker's Response*, 6 CUBAN STUDIES 40 (1976); C. MESA-LAGO, INVESTIGACIONES SOBRE LAS CONDICIONES DE TRABAJO: LA EXPERIENCIA CUBANA (1963).

23. Berman, *The Cuban Popular Tribunals*, 69 COLUM. L. REV. 1317, 1347 (1969). This appears to be the best published work on these courts although it is somewhat dated. For a discussion of Soviet comrade's courts see Berman and Spindler, *Soviet Comrade's Courts*, 38 WASH. L. REV. 843 (1963).

24. Cuba, *Los Tribunales Populares*, Verde Olivo, Oct. 16, 1966, at 24.

25. Villares, *El pueblo administrador de justicia*, BOHEMIA, Aug. 31, 1973 at 36.

26. The Committees for the Defense of the Revolution (CDR) were first organized in September 1960. The committees were set up on every block, building or factory as a national vigilance system to combat counterrevolutionary activity. Their role has since been expanded to serve as the primary grassroots political organization. See generally R. FAGEN, *supra* note 21.

27. See generally D. BUTTERWORTH, *supra* note 1.

participation was only found in appellate panels in which an assessor, usually a law student, sat as a member of the review board.²⁸ Candidates were proposed for these positions by the workers in the area served and their candidacy was screened by mass organizations to determine their moral fitness and revolutionary commitment. Legal education was a barrier rather than an asset for selection.²⁹ After initial selection candidates attended a ten day training course at which there was further screening. Advanced studies lasting forty-five days were required prior to taking office.³⁰ All judges served on a part-time basis, without monetary recompense, and maintained outside full-time employment in other sectors.

One of the most interesting features of the popular courts is that their organizational scheme placed them outside the judicial apparatus. Meanwhile traditional courts exercised jurisdiction over much the same subject matter as the popular courts but each operated independently of the other. The jurisdiction of popular courts was ill-defined and limited largely by territorial boundaries. Thus, courts located in rural areas were primarily concerned with redistribution of land and grazing disputes, while those in urban areas concentrated on neighborhood disputes, domestic quarrels and minor criminal cases.³¹

While popular courts were charged with carrying out traditional judicial functions, their uniqueness lay in the integrative and educational role which they were designed to perform. They were left to their own resources and did not have legal codes to guide them. Their decisions emerged from their everyday experience and common sense. Presiding over courts in store-front buildings or outdoors to encourage attendance, the judges were to make the trial truly an educative function. Judges were encouraged to inquire into the background of participants to determine causative factors for their behavior. Sanctions were fashioned in such a way as to personalize them and to reduce the need for institutional supervision in their implementation.³² Public reprimands, intended to serve as a deterrent to both defendant and spectator, were an integral part of all judicial proceedings.³³

28. Berman, *supra* note 23, at 1338.

29. Janero, ¿ *Qué son los Tribunales populares?*, *Verde Olivo*, Nov. 10, 1968, at 12.

30. Martí, *Juezas*, *MUJERES*, March 3, 1977, at 50.

31. Berman, *supra* note 23, at 1318-19.

32. *Id.* at 1329-32.

33. *Id.* at 1329. See also Salas, *The Emergence and Decline of the Cuban Popular Tribunals*, — LAW & SOCIETY REV. — (1983).

It is difficult to fully explain the type of behavior of judges in the popular courts without giving an example. A woman complained to one such court that a neighbor had stolen her pants. The woman accused of the offense maintained that she had purchased the pants. She proffered to the court her ration booklet which indicated the acquisition of a pair of pants in May of 1968. One of the judges on the panel interrupted to state that he worked in the clothing industry and that the pants at issue were not available in May of 1968 and, therefore, the defendant was lying and had forged her ration booklet. She was found guilty and sentenced to sixty days confinement at her residence. One of the judges also pointed out that the daughter of the complainant was not attending school and ordered her to attend school even though she had never been charged with any formal offense.³⁴

The administration of justice in popular courts differed in many important aspects from the traditional judicial process. The offender need not have been accused of a violation of the criminal code as such, but could be charged with a violation of socialist norms of conduct. These offenses were vaguely defined, allowing the court to intervene at any stage. Defendants were viewed as victims of the capitalist regime and as such subject to re-education. Re-education was to take place in a variety of ways with peer pressure being critical to the process. Formalistic procedure was a barrier to the socialization role and in most cases was the least important factor of the proceedings.

C. Problems in Transition

While a major goal of the popular courts was integration of the citizenry into the revolutionary process, many of the policies pursued during the regime's first ten years had dislocating effects on the population and achieved results contrary to those desired.³⁵ Revolutionary legislation went beyond transformation of economic and political relationships and initiated changes which struck at the core of long-held cultural values. Facilitation of divorce and marriage, elimination of racial discrimination, challenges to religious beliefs and transformation of

34. Berman, *supra* note 23, at 1319-20.

35. In 1969 the government was facing a serious problem of internal order. Juvenile delinquency had become a severe problem and many youngsters had dropped out of the educational system and were neither studying nor working. Absenteeism and low productivity plagued the economy and there was broad discontent with the experiments of the early years. L. SALAS, *supra* note 1 at 20.

the role of women generated emotional and psychological strains while other measures, such as the rationing of food and clothing, and geographical relocation, aggravated the situation.³⁶ One result of these changes was drastic increases in family disorganization, delinquency and neighborhood disputes.

Rising social disorder led the government to call mass meetings to consider these issues and possible remedies. During these meetings substantial criticisms were made with some of the most severe complaints being directed at the judiciary, particularly the popular courts. The following concerns were voiced: 1) inefficiency and conflict resulting from duplicity of jurisdictions; 2) diversity of sanctions being applied; 3) informality of the proceedings; and 4) lack of judicial and political control over the actions of diverse branches of the judiciary.³⁷

The difficulties in the maintenance of order were not isolated and reflected serious problems in the economic model pursued during these years. In August of 1970, Castro formally broke with the policies advocated by "Che" Guevara and announced that Cuba was now "entering a new phase; a much more serious profound phase."³⁸ He admitted to having made a number of serious mistakes, which he attributed to revolutionary zeal, and called for reformation of the economic and political model in line with established lines of Marxist thought.³⁹ From that point, Castro declared, decisions would be made based upon pragmatic rather than ideological considerations. Planning became the watchword of the new system with jurists being called upon to "play a more important role with the advancing perfection of our State and the new mechanisms of the Economic Direction System. We shall need more jurists, better prepared and specializing in different branches of law."⁴⁰

III. The Institutionalization Phase From 1970 to the Present: Reformation of the Judicial Structure

In order to reform the judicial structure, commissions had been

36. See generally J. DOMINGUEZ, *supra* note 2.

37. The primary complaints were voiced against the popular counts with the President and Minister of the Interior leading the charges. Del Valle, Speech at closing of First National Forum of Internal Order, VERDE OLIVO, April 27, 1969, at 24.

38. F. Castro, *Discurso en el décimo aniversario de la constitución de la Federación de Mujeres Cubanas*, GRANMA REVISTA SEMANAL, Aug. 30, 1970, at 4-5.

39. *Id.*

40. F. CASTRO, FIRST CONGRESS OF THE COMMUNIST PARTY OF CUBA (1976).

formed in 1969.⁴¹ The work of these commissions gave rise in 1973 to a new law reorganizing the judicial structure.⁴² The primary reforms were: unification of the judicial system into a pyramidal structure consisting, in ascending order, of base courts, regional courts, provincial courts, and the Supreme Court; integration of the judiciary into the political structure by making it subordinate to the Council of Ministers; collegiality of all courts which were to be integrated by law; professional judges who would all be subject to election and recall; right of appeal in all cases; reorganization of the prosecutorial apparatus; and abolishment of the private practice of law.⁴³ Further modifications were necessary in 1976 when the new Constitution was adopted⁴⁴ because of reforms in the politico-administrative structure.⁴⁵ The new changes finalized the unification process begun in 1973 by adding appellate competence to lower courts over decisions of administrative tribunals and merging the duties of base and regional courts into municipal courts.⁴⁶ Figures 1 and 2 provide the reader with some comparison of these changes by presenting diagrams of the Cuban judicial structure prior to 1973 and after 1977, when it took its present form.

41. Roca, *El nuevo sistema judicial*, *Verde Olivo*, Jan. 21, 1973, at 36.

42. Ley de Organización del Sistema Judicial, GACETA OFICIAL DE LA REPUBLICA DE CUBA, June 23, 1973 at 57-58 (arts. 1-177).

43. *Id.*

44. CONSTITUCION DE LA REPUBLICA, GACETA OFICIAL DE LA REPUBLICA DE CUBA, Feb. 24, 1976. In order to comply with the political changes in the Constitution, a new law on the organization of courts was adopted in 1977. *Ley de Organización del Sistema Judicial*, GACETA OFICIAL DE LA REPUBLICA DE CUBA, Aug. 25, 1977 at 489 (arts. 1-154) [hereinafter cited as *Ley de Organización*]. For a comprehensive review see Comment, *The Socialist Constitution of Cuba (1976)*, 17 COLUM. J. OF TRANSNAT'L L. 451 (1978).

45. The new Constitution substantially changed the political structure of the country by redefining the number and types of political divisions (e.g. provinces and municipalities) within the country.

46. Ley de Organización, *supra* note 44, at arts. 33-50.

Figure 1

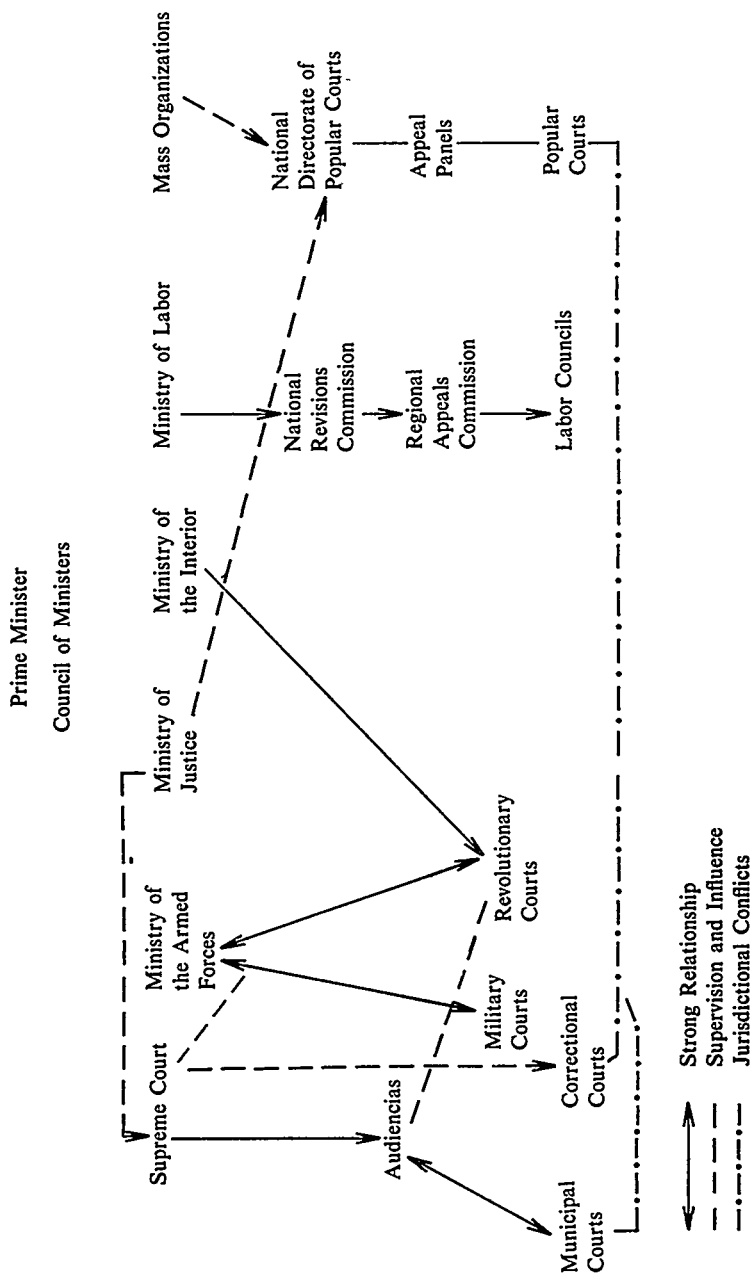
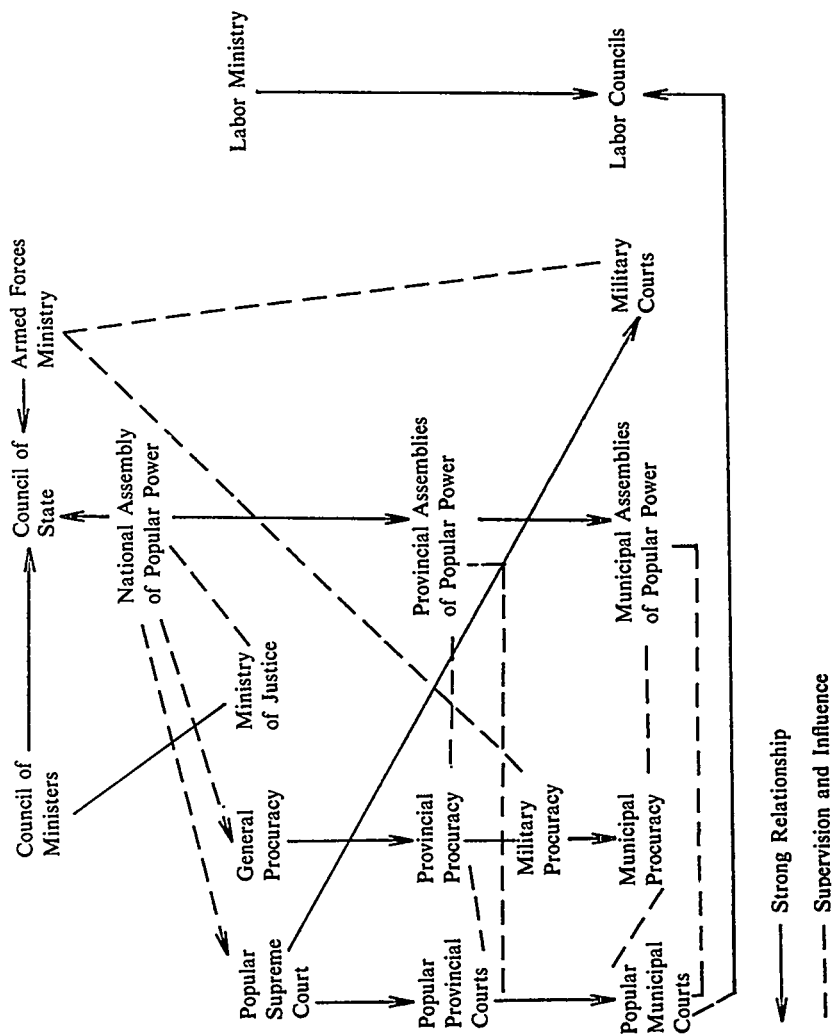


Figure 2

The Present Politico-Judicial Structure of Cuba



A. The New Court Structure

Municipal courts are the lowest trial courts within the system and exercise jurisdiction over certain civil and criminal cases.⁴⁷ Trials are presided over by a three-judge panel, composed of one professional judge and two lay judges, with all members being elected by municipal assemblies from nominations made by the Ministry of Justice.⁴⁸ The minimum qualifications for judges differ depending on the court in which they serve. Professional judges must have practiced law for at least three years as well as fulfilling other age and general requirements.⁴⁹ Professional judges are expected to serve full-time while lay judges maintain other employment and serve only during two nonconsecutive one-month terms a year.⁵⁰

Provincial courts are at the next level, serving as the primary trial courts for serious cases as well as exercising appellate jurisdiction over the rulings of the municipal courts.⁵¹ Unlike the lower courts, which hear a variety of cases, these courts are divided into four branches: a criminal division, a civil and administrative division, a labor division and a division to deal with crimes "against the security of the State."⁵² A plenum of all judges acts as a supervisory body over their affairs.⁵³ Provincial assemblies conduct the election of judges after they have been nominated by the Ministry of Justice. Professional judges serve five-year terms while lay judges serve two-and-one-half-year terms.⁵⁴

The Supreme Court exercises ultimate judicial authority over all inferior tribunals; distributing its responsibilities among five branches,

47. Their jurisdiction extends over criminal cases in which the maximum penalty does not exceed nine months imprisonment or fines exceeding 270 quotas, as well as indexes of precriminality and contraventions (minor crimes). *Ley de Procedimiento Penal*, GACETA OFICIAL DE LA REPUBLICA DE CUBA, August 15, 1977, art. 8 [hereinafter cited as *Ley de Procedimiento Penal*]. Civil jurisdiction is exercised over cases in which the disputed amount does not exceed 1000 pesos, family disputes, child support cases, as well as hearing appeals from decisions of Labor Councils. *Ley de Procedimiento Civil*, GACETA OFICIAL DE LA REPUBLICA DE CUBA, August 26, 1977, art. 5 [hereinafter cited as *Ley de Procedimiento Civil*].

48. Municipal assemblies are the lowest legislative bodies within the Cuban political structure.

49. *Ley de Organización*, *supra* note 44, at arts. 66-67.

50. *Id.* at arts. 68-69.

51. *Id.* at arts. 79, 83.

52. *Id.* at art. 34.

53. *Id.* at art. 36.

54. *Id.* at art. 75.

similar to those found in the provincial courts, with the addition of a military division. All the member justices, the Procurator General,⁵⁵ and the Attorney General,⁵⁶ constitute the full Court, exercising supervision over the Cuban judiciary and making recommendations to the National Assembly,⁵⁷ the Cuban legislature. Justices of the Court are appointed by the National Assembly upon nomination by the Ministry of Justice. The President and Vice-President of the Court however, while appointed by the assembly, are nominated by the President of the Council of State and Chief of Government. The only other exception is the judges serving in the military branch who must hold military rank and are nominated by the Armed Forces Ministry.⁵⁸

In addition to these supervisory duties, the Court also exercises appellate jurisdiction over all decisions of the provincial and military courts. Original jurisdiction is accorded all cases brought against high-ranking political functionaries. These may only be pursued with the approval of the body of which the accused is a member and are heard by the full court.⁵⁹ All other cases are heard by randomly selected five judge panels.

B. The New Role of the Judiciary: Lay and Professional Judges

Incorporation of the judiciary into the political structure was carried out after a great deal of thought and negotiations. Proponents of the new scheme questioned the whole notion of judicial autonomy, claiming that judicial independence arises

from their abidance with the law. After all they are independent to the effect of applying justice, that is their judicial function. But not that type of independence, in the abstract, which has been proclaimed by bourgeois idealists. . . . Here the judicial system is an organ of the State, just like any other, which has been assigned a

55. The Procurator General heads the Procuracy, the government agency charged with upholding the law in all branches of public and private life. For further discussion, see *infra* notes 106-117 and accompanying text.

56. The Attorney General may participate but may not vote in these meetings. The Procurator General has full membership rights. *Id.* at art. 20.

57. *Id.*

58. *Id.* at art. 74.

59. The following persons are included: 1) members of the Political Bureau of the Communist Party; 2) the President, Vice-President and Secretary of the National Assembly; 3) members of the Council of State; 4) justices of the Supreme Court; and, 5) all procurators attached to the General Procuracy.

specific task to fulfill.⁶⁰

New legislation achieved further control of the judiciary through new reporting procedures and sanctioning mechanisms.⁶¹ Under these provisions courts must issue annual reports to their electing assembly and be ready to answer questions regarding their activities.⁶² Assemblies may make recommendations to the courts and may remove any of its judges at any time without cause.⁶³ The judiciary may also take other actions against its own members under certain procedural rules.⁶⁴

One of the major innovations introduced by the popular court movement was the concept of the lay judge. This has been retained under the new structure. The purpose of retaining lay judges in the new formalization movement is twofold: the influence which popular notions of justice might have on professional judges and the impact which participation might have on the populace, with both groups seen as educating each other.⁶⁵

Cases presented before Cuban tribunals are heard by a panel of three justices, two lay judges and one professional judge.⁶⁶ While lay and professional judges are legislatively equal, in actuality they often are not. Professional judges serve throughout the year while lay judges only serve during two nonconsecutive one month terms. In addition, professional judges preside over all proceedings and give legal training to their lay counterparts. Indeed the term "lay judges" may be somewhat misleading. All lay judges receive some legal training prior to assuming office and must participate in continuing legal education classes

60. Sanchez, *Participación popular en los nuevos tribunales*, BOHEMIA, July 20, 1973, at 72, 73. See also Guma, *The National Judicial System: An Integral Part of Revolutionary Power*, GRANMA WEEKLY REVIEW, September 5, 1971, at 8. The argument is settled by the Cuban Constitution, art. 122, which states that "[t]he courts constitute a system of State organs structured with functional independence from any other organ and subordinate only to the National Assembly of People's Power and the Council of State."

61. Ley de Organización, *supra* note 44, at arts. 79-82.

62. *Id.*

63. The presence of the Procurator General and Attorney General on the Supreme Court provides further checks on the judiciary.

64. Ley de Organización, *supra* note 44, at arts. 87-91.

65. Speech by Blas Roca, in 3 REVISTA CUBANA DE DERECHO 39 (1974). The emphasis on this institution is not merely rhetorical. The Cuban Constitution, for example states that "[i]n view of their social importance priority should be given to the judicial function assigned to the lay judges." CUBAN CONST. art. 127 (1975).

66. Ley de Organización, *supra* note 44, at art. 9.

during their term, with prior service being taken into consideration in assignments to higher courts.⁶⁷

While the primary role of the lay judge has been to popularize the judiciary, professional judges have progressively moved toward specialization.⁶⁸ This is product of the need for a bureaucratic cadre within the complex structure of Cuba's new economic and political structure. Fidel Castro recognized this when he outlined the role of the judiciary as "growing with the development of our State and with the mechanisms of our new system for plannification [sic] of the national economy. We will need more judges, better prepared and specialized in the different branches of the law."⁶⁹ Adding impetus to professionalization has been the creation of the National Association of Cuban Jurists, formed in 1977. The organization seeks to bring within its ranks all professional judges and attorneys and to represent their interests.⁷⁰ The decision to exclude lay judges and the failure to establish a comparable organization for them is indicative of the difficulty in simultaneously emphasizing both the professionalism and the popularization of the judiciary. A direct result of the emphasis on popularization during the early years has been the dramatic increase of women in the judicial branch. In fact, twenty-nine percent of the organizing committee of the National Association of Jurists and thirty-five percent of the executive committee were women.⁷¹

Communist party membership is not officially required of judges but revolutionary militancy is stressed in their selection and promotion.

In the courts we have comrades who are members of the Party, we have comrades who are members of the Union of Young Communists and we have members who are not in either organizations but are simply participants in our revolutionary society, ready to work honestly in accordance with their knowledge and convictions. But all of them need to know Marxism-Leninism, whatever their beliefs may be, because Marxism-Leninism gives us the foundations to un-

67. L. SALAS, *supra* note 1, at 232-35.

68. The major trial courts and all appellate courts are divided into specialized branches with judges serving lengthy periods in them. L. SALAS, *supra* note 1, at 221-25.

69. F. CASTRO, FIRST CONGRESS OF THE COMMUNIST PARTY OF CUBA, 293 (1976).

70. Jorge, *Congreso constituyente de la Unión Nacional de Juristas de Cuba*, BOHEMIA, June 3, 1977, at 22.

71. Alvarez, *La Unión Nacional de Juristas de Cuba*, VERDE OLIVO, May 30, 1976, at 16.

derstand the phenomenoms of life and the phenomena of this society.⁷²

The foregoing raises questions as to the autonomy of the Cuban judiciary, a common criticism of Marxist regimes, and a factor which is undoubtedly applicable to political trials. While direct interference is common in such cases, the majority of Cuban cases involve common crimes in which intervention is less direct and takes place in the form of general direction rather than interference in specific cases. Actions taken by the Cuban regime are indicative of this trend. In a recent speech, Castro decried rising crime rates and called on the Cuban judiciary to impose higher sanctions. After all, "[o]ur judges are revolutionary judges. . . . [T]hey come from the people to whom they are responsible in the corresponding assemblies. [I]n the future [these judges] will sanction with the corresponding severity those who commit repugnant crimes as well as recidivists or those who maintain dangerous anti-social conduct."⁷³ The day after the speech a Supreme Court justice was interviewed in a newspaper and announced his complete agreement.⁷⁴

Following the Castro speech a number of actions were taken. The Political Bureau of the Communist Party and the Council of State issued directives to the Procuracy⁷⁵ and the courts regarding procedural changes necessitated by the struggle against crime.⁷⁶ Both groups responded swiftly to these directives.⁷⁷ Similar results were obtained when Castro complained about the leniency of the courts in dealing with common criminals. Referring to one specific case, Castro was quick to point out that "we can't simply act in an arbitrary manner to correct an arbitrary action, we cannot commit an illegal act, especially now, when we are exhorting all of the people to obey the law."⁷⁸

A review of the disposition of cases within the Cuban court system provides a better picture of the independence of the judiciary: forty-

72. Roca, *supra* note 64, at 41.

73. Granma, January 31, 1978, at 2, col. 1 (speech by Blas Roca, president of Asamblea Nacional del Poder Popular, Jan. 27, 1978 (quoting Fidel Castro)).

74. *Id.*

75. See *infra* notes 106-117 and accompanying text.

76. República de Cuba, Asamblea Nacional del Poder Popular, *Acta: Primer Período Ordinario de Sesiones, 28, 29 Y 30 de junio, 1978*, 231-272 (hereinafter cited as *Acta*).

77. *Id.*

78. *Id.* at 216.

three percent of all cases filed by the Procuracy during 1977 were dismissed by the courts as a result of poor investigations by the police and the Procuracy.⁷⁹ Thirty-nine percent of those persons tried in base courts were acquitted, as were thirty-seven percent of those tried in regional courts and twenty-eight percent in provincial Courts.⁸⁰ The Supreme Court attributed these rates to poor preparation by the Procuracy, police and defense attorneys and refused to acknowledge judicial leniency as one of the factors.⁸¹ These practices extend to appellate courts which have overturned lower court decisions in thirty-three percent of the cases.⁸²

Judicial autonomy is not only evidenced in leniency but is also seen in those decisions by the courts which are contrary to policies espoused by government leaders. This is especially true when dealing with the pretrial release of accused persons which in turn impacts on governmental resources as well as it affects policy considerations negating the use of monetary measures. The figures released by the Procuracy for 1977 reveal that the most prevalent pretrial measure was imprisonment, being used in over fifty-one percent of the cases with less than one percent of the defendants being released on their own recognizance.⁸³ These actions prompted severe criticisms from the executive and resulted in new directives aimed at changing this trend.⁸⁴ The foregoing indicates considerable independence on the part of the Cuban judiciary, probably resulting from renewed emphasis on professionalism. Party interference appears to be directed at dictating broad policy decisions while attempting to remain aloof from everyday control over judicial actions.

C. Procedural Innovations

The road followed by Cuban courts in establishing their procedural norms has been inconsistent and rocky. During the first years, procedural niceties were abandoned in favor of political necessity. Criminal law was applied retroactively. The principle of double jeopardy was violated at will. Suspension of the right of habeas corpus and

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.* A comparison of statistics on reversals in U.S. appellate courts would be misleading.

83. *Id.*

84. L. SALAS, *supra* note 1, at 231.

expansion of sanctions resulted in ever increasing punishments.⁸⁵ In order to further expand these powers, revolutionary courts were established as a separate entity from the traditional courts and defendants' rights were further weakened.⁸⁶ The introduction of these popular courts signalled a move away from the formalism of the civil law system of prerevolutionary Cuba. No formal legislation was ever enacted bringing these courts into existence and the absence of formal procedure was one of its primary features. The emphasis of the popular courts on example brought these courts closer to common law tribunals than their traditional counterparts.

The 1973 and 1977 efforts to institutionalize eliminated many of the experimental features of the early years. Cuban procedure is now formalistic and adheres to traditional norms. The following safeguards, under the new code of criminal procedure, are exemplary: 1) the presumption of innocence, requiring that crimes be proven independently of statements by the accused;⁸⁷ 2) the public nature of court proceedings except in cases of national security or those in which the rights of the victim demand privacy;⁸⁸ 3) the right to appointed or retained counsel;⁸⁹ 4) the presence of the accused during the proceedings;⁹⁰ and 5) the recognition of the privilege against self-incrimination.⁹¹

Under the new Code of Criminal Procedure, the criminal proceeding is divided into two main parts: the preparatory stage and the oral trial. During the preparatory stage features of the inquisitorial system predominate, while the accusatorial system dominates the trial process. The procurator⁹² conducts the majority of pretrial proceedings under the supervision of an investigating magistrate. A substantial modification of this system is the transfer of this judicial function from the hands of a legal functionary to a police official who plays the part of investigating magistrate.⁹³

85. INT'L COMM'N OF JURISTS, *supra* note 6, at 85-114.

86. H. THOMAS, CUBA: THE PURSUIT OF FREEDOM 1458-60 (1971). Revolutionary courts, staffed with military personnel established with military personnel serving as judges, were established to exercise exclusive jurisdiction over political cases. No right of appeal to traditional courts was available.

87. Ley de Procedimiento Penal, *supra* note 47, at art. 3.

88. *Id.* at art. 305.

89. *Id.* at art. 281.

90. *Id.* at art. 132.

91. *Id.* at art. 312.

92. See *supra* note 55 and *infra* notes 106-117 and accompanying text.

93. Ley de Procedimiento Penal, *supra* note 47, at art. 105.

Once the preliminary stage has been completed, a three judge panel is constituted to hear the charges against the defendant. Strict guidelines determine the order and manner of procedure within this process. The trial concludes with the sentencing stage during which the findings of fact and sanctions to be imposed must be considered. These findings must be arrived at by a majority of the court with the panel's range of judicial options limited by the crime charged and the sanction sought by the prosecution.⁹⁴

Appeals take place by complaint, petition, appeal or cassation.⁹⁵ Complaints are interlocutory appeals from decisions made during the preparatory phase while petitions are interlocutory appeals from trial court decisions. Appeals from final decisions take the form of appeals or cassation, with the latter being the most common form of relief.⁹⁶ This indicates a return to procedural patterns common throughout civil law jurisdictions and the adoption of a procedural scheme which has more commonalities with prerevolutionary Cuba than with other socialist nations.

D. The New Role of the Courts

The role to be played by Cuban courts, within the new political structure, is similar to that of traditional courts with one significant difference: their educational purpose.⁹⁷ The goal of the court system extends beyond mere propagation of legal knowledge. It ultimately seeks the transformation of political culture, modifying Cuban citizens into "new men" emphasizing collectivism and unselfishness. It is the assignment of this role to the courts that makes socialist systems different from their capitalist counterparts.⁹⁸

94. *Id.* at arts. 349-58.

95. Cassation is a civil law appeal procedure which seeks to overturn a final sentence.

96. *Ley de Procedimiento Penal*, *supra* note 47, at art. 67.

97. The Constitution speaks of the following: 1) upholding socialist legality; 2) safeguarding the Marxist nature of the State; 3) protection of common and individual property; 4) safeguarding State rights; 5) while also preventing abuse of individual rights; 6) prevention of crime and reeducation of offenders; and 7) to "increase the socio-juridical awareness of the people, stressing the fact that the law must be strictly obeyed, making timely comments in their decisions aimed at educating all citizens in their conscientious and voluntary fulfillment of their duty of loyalty to the country, the cause of socialism and the standards of socialist living." CUBAN CONST. art. 122 (1976).

98. *Ley de Organización*, *supra* note 44, at art. 4 (8). *See also*: Berman, *The*

The Cuban courts accomplish this task in two ways: first, through propaganda designed to enhance popular knowledge and interest in legality; and, second, by "re-educating" those who appear before them. The first method is carried out in a fairly straightforward manner with the most active participants being members of the Procuracy. While traditional approaches such as conferences or roundtables are used to encourage popular discussion, the most innovative approaches have taken place in the usage of the mass media.⁹⁹ At least four radio programs weekly are devoted to discussions of legal matters with similar patterns being followed in the print media and television.¹⁰⁰ Perhaps the most imaginative concept has been the establishment of literary contests for the publication of novels which deal with crime investigation and prevention.¹⁰¹ All of these approaches are directed both at educating the public about correct notions of legality and upgrading respect for the judicial system and its functionaries.

One of the principal mechanisms for carrying out the transformation of the political culture by the courts has been the legislative process. Every new major law is thoroughly discussed at local levels prior to implementation. The Law on Loafing, for example, was discussed by more than three million persons in over 115,000 assemblies.¹⁰² Complementing these discussions are serious efforts to arrive at a final product which is easily understood by the masses.¹⁰³

Educational Role of Soviet Criminal law and Civil Procedure, in CONTEMPORARY SOVIET LAW: ESSAYS IN HONOR OF JOHN N. HAZARD 1 (1974).

99. During 1977 over 3,347 conferences were presented at worker and student meetings with attendance running at slightly under 110,000 persons. They were directed primarily at leaders of mass organizations with the expectations that they would return to their membership and share their experience. *Acta, supra* note 75, at 291.

100. *Id.* "Síntesis del informe a la Asamblea Popular sobre el trabajo de la Fiscalía General de la República en el año 1977," at 290-91.

101. Most of these contests are sponsored by the Ministry of the Interior. The first one was held in 1972 and has since become an annual affair. Under the rules of the contest anyone may submit a novel dealing with crime which will then be judged not only on the basis of its literary quality but also on the image which it presents of crime and functionaries. These novels have been published and distributed widely and have become extremely popular throughout the island. Dramatizations on television, movies, and radio are another source of propaganda and achieve similar results. *See L. SALAS, supra* note 1, at 280-81.

102. Kennedy, *supra* note 1, at 1186. (The Law on Loafing was a quasi-criminal law sanctioning laborers for inefficiency and absenteeism).

103. The following statement, in reference to the new law on court organization is illustrative: "we have tried to draft the Code in such a way that it becomes a legal text which can be understood by everyone, thus contributing to the struggle for socialist

In addition to mass education, the courts also seek to transform legal culture through the judicial process itself. Under Cuban law it is not only the task of the court to decide on facts but also to "formulate in their decisions opportune pronouncements aimed at the education of the citizenry in the conscious and voluntary observance of their duties. . . ." ¹⁰⁴ Courts are further encouraged to make findings on the impact which the judicial process has on popular consciousness by inquiring as to the background of participants and the factors which motivated their behavior. ¹⁰⁵ Courts have responded by protesting that they are not in a position to gauge judicial impact and pointing out the delicate balance which must be struck between education and safeguarding a defendant's rights. ¹⁰⁶ The present emphasis on utilization of the judicial process as a central tool in popular education is reminiscent of the popular courts. It likewise faces the same obstacles. For example, while it may be desirable to hold court sessions in outdoor sites to encourage attendance, as the popular courts did, an undesirable by-product may be disrespect toward the judicial process, something which is anathema to the formalism introduced by the new court structure. While it is still too early to measure the effect which the court system has had on popular culture it is clear that the system has encountered significant barriers in achieving this goal.

E. The Procuracy: A New and Powerful Judicial Functionary

One of the major changes brought about by the new court system has been the creation of a new and previously unknown judicial agency, the Procuracy. Its duties extend beyond the traditional duties of attorney generals' offices; it is charged with supreme supervisory power over the execution of all laws. ¹⁰⁷ A great deal of latitude has been extended to the Procuracy in carrying out this supervisory function. All adminis-

legality. The empire of socialist legality is based on a socio-juridical consciousness, it demands that, not only there exist legal norms but that they are also widely known and that everyone be aware of what they can and cannot do without risking a sanction. It requires that everyone know and understand the law. One of the primary means of achieving these objectives is the adoption of legal codes characterized by clarity and simplicity in the language utilized by the drafters of the legislation." Roca, *supra* note 41, at 39.

104. Ley de Organización, *supra* note 44, at art. 4(8).

105. *Acta*, *supra* note 76, at 163.

106. *Id.* at 225-226.

107. Ley de Organización, *supra* note 44, at art. 108.

trative and governmental bodies fall within its jurisdiction, allowing it to review not only past conduct but also prospective actions of all organs of State power.¹⁰⁸ In some instances, as in the case of penal institutions, it has responsibility over day-to-day supervision to insure that judicial and legislative orders are being properly carried out.¹⁰⁹

The powers of the Procuracy are even broader with respect to the judicial system. It supervises pretrial investigations and has arrest powers.¹¹⁰ Adverse decisions by the investigating magistrate may be appealed to the Procuracy which exercises ultimate authority in these matters as well as the decision to prosecute.¹¹¹ The Procuracy may appeal any decision of a lower court.¹¹² In addition to its prosecutorial role, the Procuracy shares a number of supervisory functions with the judiciary. The Procurator General sits as a voting member of the plenum of the Supreme Court and is charged with drafting all new legislation.¹¹³

Another factor which adds considerable power to this office is the independence which it possesses from all other State organs. The National Assembly appoints the Procurator General upon nomination by the Council of Ministers.¹¹⁴ To assure independence from local legislative assemblies, the office is completely centralized and responds only to the National Assembly.¹¹⁵ Regardless of their conduct, correctional measures may be imposed on procurators only by their superiors.¹¹⁶ The judiciary's power is limited to making recommendations alleging misconduct to the Procurator General.¹¹⁷

108. Administrative agencies must forward to the Procuracy copies of all resolutions and orders for inspection and approval. If the Procuracy finds some illegality it may complain to the superior involved and demand a formal reply within twenty days. This complaint mechanism may be followed up to the Council of Ministers. *Id.* at Art. 148-50. In addition, the Procuracy is encouraged to hear citizen complaints alleging administrative misconduct or abuse. During the year 1977, for example, 48,286 complaints were lodged by citizens with some action being taken in over 10,000 of these cases. *Acta, supra* note 75, at 284.

109. *Ley de Organización, supra* note 44, at art. 106(9).

110. *Ley de Procedimiento Penal, supra* note 47, at art. 105.

111. *Id.* at arts. 250, 261.

112. *Ley de Organización, supra* note 44, at art. 106.

113. *Id.* at art. 20, 106.

114. *Id.* at arts. 119-20.

115. *Id.* at art. 108.

116. *Id.*, at art. 133.

117. *Ley de Procedimiento Penal, supra* note 47, at art. 93.

The Procuracy is primarily a Soviet innovation.¹¹⁸ Its broad powers are dictated by the complex apparatus necessary to manage Cuba's centralized economy. Its role extends beyond traditional prosecutorial duties and is one of facilitator, ensuring that national policies are complied with while trying to maintain some function over a mammoth bureaucracy.

F. Attorneys: Changes in the Legal Profession

From the inception of the revolutionary takeover there were serious clashes between the legal profession and the new government. Prior to the revolution, law was one of the preferred professions for the Cuban upper class and, as in most Latin American countries, there was an abundance of trained legal technicians.¹¹⁹ As with the judiciary,¹²⁰ the case which triggered open conflict between the government and the organized bar involved the Batista aviators who were accused of genocide.¹²¹ A power struggle, for control of the bar association, ensued in July, 1960 when a group of lawyers, dressed as militia men, took over the offices of the bar association seeking recognition from the Supreme Court which they subsequently received.¹²² By 1961 a substantial number of Cuban lawyers had fled the island and most law firms were depleted.¹²³

The government's position toward lawyers was one of distrust. Numerous speeches associated lawyers with the ruling classes which the regime had deposed.¹²⁴ In addition to the political connotations at-

118. For a full discussion of the Procuracy's history see H. BERMAN, *JUSTICE IN THE U.S.S.R.* (1963).

119. The College of Lawyers of Havana is one of the oldest professional associations on the island, having been established more than 100 years prior to the revolutionary takeover. By 1960 it claimed more than 4,300 Havana lawyers as its members. INT'L COMM'N OF JURISTS, *supra* note 6, at 67.

120. See *supra* note 5 and accompanying text.

121. See F. MORENO, *supra* note 5.

122. INT'L COMM'N OF JURISTS, *supra* note 6, at 63-9.

123. See generally Cruz, *supra* note 20.

124. The following statement is exemplary: "The prerevolutionary bar associations, in spite of the efforts of some of its members, were not capable of even protecting the interests of individual lawyers in light of unemployment and low income. They represented the interests of the large law firms. In the dispute between the powerful rich client and a party of low or moderate means, the lawyer who represented the latter was almost sure to lose. All of the advantages of the prior regime were in favor of the wealthy and all the disadvantages were placed on the poor even though he/she were a

tached to lawyers, there were other reasons which contributed to their decline: the importance placed on technical professions by the economic demands of the "moral economy"; the view of lawyers as the consummate bureaucrats so repugnant to "Che" Guevara's policies; and, the potential threat that they posed to the political survival of the regime. As a result, enrollments in the law faculties declined from a high of 2,853 in 1958-59 to 135 in 1970-71.¹²⁵

Even though the importance of the profession was downgraded during the early years, practitioners were able to adapt and even innovate. In 1965 the first attempt to discourage private law firms and establish collective ones was introduced through the Havana Bar Association as an experiment.¹²⁶ By 1969, twenty to thirty percent of lawyers remained in private practice and had refused to join the new law firms.¹²⁷ In conjunction with the new law commissions, the Ministry of Justice asked the commissions to study the possibility of establishing collective law firms throughout the island.¹²⁸ As a result of these meetings the new law on court organization dictated the adoption of this model.¹²⁹

Under the new regulations, collective law firms were established as autonomous social organizations whose day-to-day operations are supervised by the Ministry of Justice.¹³⁰ Members of law firms receive salaries in accordance with employment contracts entered into between the law firm and the lawyer. This guarantees to each a minimum wage while allowing rewards based on productivity.¹³¹ Fees charged vary in accordance with a fee schedule developed by the national organization and approved by the Ministry of Justice.¹³² Although general requirements for licensure must be met, primary control over entry occurs at the law school level which demands high standards, both academic and political, of applicants.¹³³

lawyer." *Congreso Nacional de Bufetes Colectivos*, 3 REVISTA CUBANA DE DERECHO 64, 66 (1974).

125. J. DOMINGUEZ, *supra* note 2, at 257.

126. Resolución Número 18 del Ministerio de Justicia, GACETA OFICIAL DE LA REPUBLICA DE CUBA, February 4, 1965, at 130.

127. Berman, *supra* note 23, at 1339.

128. *Congreso Nacional de Bufetes Colectivos*, *supra* note 123, at 66.

129. Ley de Organización, *supra* note 39, at arts. 145-153.

130. *Id.* at art. 149.

131. A. PRIETO MORALES, DERECHO PROCESAL PENAL 142-45 (1976).

132. *Id.* at 142.

133. Together with the School of International Relations, supervised by the Min-

In accordance with the Cuban Constitution and Code of Criminal Procedure, all criminal defendants are entitled to the assistance of counsel.¹³⁴ Counsel may be appointed by the court or retained by the accused. Appointments are made on a rotating basis from the rolls of collective law firms with lawyers serving pro bono. In almost all civil cases, the Code of Civil Procedure requires that counsel be employed by a party appearing before the court.¹³⁵

The role of lawyers has been redefined during different periods of revolutionary rule. By 1969 the criminal defense attorney was expected not to argue "that his client is innocent, but rather to determine if his client is guilty and, if so, to seek sanctions which will best rehabilitate him."¹³⁶ The new legislation demands that attorneys define "appropriately the interests that they represent, avoiding abusing appellate mechanisms and the means of defense which the law guarantees in such a way as to prevent justice from performing its social function."¹³⁷ This is not to say however that the defendant's interests are not represented, "not because we are afraid that these officials would use their powers incorrectly but because this departs from the adversarial system established in our procedure as a guarantee of an effective judicial system."¹³⁸

At the present time Cuba is in the unique position, among Latin American countries, of having a shortage of lawyers. The earlier policies, combined with the flight of many members of the profession, have produced some unexpected results. Women, for example, are heavily represented within present ranks.¹³⁹ In recent years, the new emphasis on socialist legality and the need for more trained legal personnel have led to renewed interest in the profession. This has resulted in high en-

istry of Foreign Relations, law school entrance is subject to a high degree of political scrutiny, with a great deal of emphasis being placed on the applicant's degree of "revolutionary integration."

134. CUBAN CONST. art. 58; Ley de Procedimiento Penal, *supra* note 47, at art. 281.

135. Ley de Procedimiento Civil, Administrativo y Laboral, GACETA OFICIAL DE LA REPÚBLICA DE CUBA, Aug. 20, 1977 (arts. 1-738), at art. 66.

136. BERMAN, *supra* note 23, at 1341.

137. Ley de Organización, *supra* note 44, at art. 143.

138. Speech by Armando Torres Santrayll, Congreso Nacional Constitutivo de los Bufetes Colectivos, 3 REVISTA CUBANA DE DERECHO 64, 70 (1974).

139. During the first years of revolutionary rule the importance of the legal profession was downplayed and men were encouraged to enter technical fields. Women filled many of the vacancies left by the flight of men to other professions. Salas, *supra* note 33.

rollments at law faculties and a renewed sense of professionalism.¹⁴⁰

IV. Conclusion

The development of the Cuban legal system since the revolution has followed a rocky road, paralleling the establishment of the political and economic system. While the popular courts of the early days attracted many foreign admirers, they did little to contribute to the institutionalization of reforms. Modifications in procedure and judicial structure have supplanted many of the experiments of the early years resulting in a legal system reminiscent of traditional Latin American institutions.

Experimentation was only possible during the early years when the primary goals were destruction of the old and survival of the new. Once the revolution entered a stage of institutionalization, those qualities which were the mainstay of the preceeding period became anathema to the formalism and accountability which the State sought. Fidel Castro spoke of this in 1971:

In this revolutionary process there is a paradox characterized in the first phase by iconoclasm in relation to laws; we have to destroy the system, destroy its laws, destroy everything. We now have two truths: the first is that capitalist legality must be destroyed and the second is that we must establish a socialist legality.

And to us revolutionaries corresponds this dual role of abolisher of laws in one phase of the revolution and creators and defenders in another phase of the revolution. And this is in agreement with another law: the dialectic of history. So that we must all live in these very two dialectical phases: destroying first and later creating. From the first phase a certain illegal spirit which downgrades arises and this contempt is also applied as well to revolutionary laws.¹⁴¹

It is still too early to forecast the ultimate shape which the legal apparatus will realize but it is clear that it will not return to the turmoil and change of the revolutionary period. The leadership has

140. The number of law students had fallen from 2,853 in 1958-59 to 135 in 1970-71. J. DOMINGUEZ, *supra* note 2, at 257. During a visit to Cuba in 1979 this author found law school enrollment to be rising quickly with more than 1,000 students enrolled.

141. Speech by Fidel Castro on the tenth anniversary of the founding of the Ministry of the Interior, *supra* note 4, at 63.

learned, at a high cost, that a judicial system cannot be counted on to rapidly, if ever, transform the political culture of the citizenry which it serves.